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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,785	07/19/2004	Stanley Marcus	7984/84087	6815
42798	7590	10/09/2007		
FITCH, EVEN, TABIN & FLANNERY P. O. BOX 18415 WASHINGTON, DC 20036			EXAMINER REIS, TRAVIS M	
			ART UNIT 2859	PAPER NUMBER
			MAIL DATE 10/09/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/501,785	MARCUS, STANLEY	
	Examiner	Art Unit	
	Travis M. Reis	2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>20040719</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

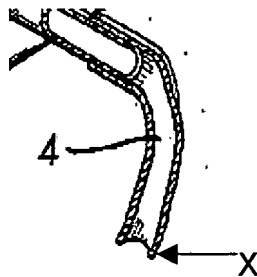
1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 7-9, & 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Pfeiffer (U.S. Patent 2350187).

Pfeiffer discloses an apparatus and method of using for repelling animals from an area which includes a control unit (6) for applying a source of compressed air, a network (5) of elongated flexible tubes (4) each with an inlet which are connected to the source of compressed air, and outlet nozzles (X, see below)



through which compressed air escapes from the flexible tubes to cause a reaction force which causes substantially random movement of the tubes within the area (page 1, left col. line 26); wherein the tubes, and a time interval between successive periods during which the tubes are caused to move, are for periods which are variable (page 1, left col. lines 36-40).

3. Claims 7-9, 11, & 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Gazit et al. (U.S. Patent 6186857).

Gazit et al. discloses an apparatus including a source of compressed air (130), a network (140) of elongated flexible tubes (148) each with an inlet (150) which are connected to the source of compressed air (Figure 7), and outlet nozzles (i.e. as correspondingly referenced as

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(48b) in Figure 1) through which compressed air escapes from the flexible tubes to cause a reaction force which causes movement of the tubes within the area (col. 2 lines 27-34); wherein the tube is elevated upon application of the compressed air (Figures 3-6) to the inlet and is allowed to settle to an inoperative position when the compressed air is not applied to the inlet (Figure 2).

With respect to the preamble of the claims 7-9, 11, & 12: the preamble of the claim does not provide enough patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self – contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5 & 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pfeiffer in view of Tilton (U.S. Patent 4185581).

Pfeiffer discloses all of the instant claimed invention as stated above in the rejection of claims 1-4, 7-9, & 12, but does not disclose water entrained in the compressed air.

Tilton discloses a weight responsive spray bird-scare perch (10) which uses water (38) and air (44) to spray birds landing on the apparatus in order to scare, irritate, and distress said birds without causing permanent harm (col. 3 lines 1-8). Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to add the water disclosed by Tilton to the network disclosed by Pfeiffer in order to scare, irritate, and distress

birds without causing permanent harm.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gazit et al. in view of Chen (U.S. Patent 6422915).

Gazit et al. discloses all of the instant claimed invention as stated above in the rejection of claims 7-9, 11, & 12, but do not disclose the tube is caused to rotate around a fixed axis.

Chen discloses a dynamic collapsible revolving toy (Figure 1) which utilizes a driving motor (30) to turn the tube sets (50, 60). Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to add the rotating means disclosed by Chen to the source of compressed air, thereby causing the tubes to rotate around a fixed axis, in order to allow the figure to be seen from all angles.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Clotworthy discloses an automobile signal (U.S. Patent 1448728). Gardner et al. discloses a display (U.S. Patent 2348250). DeFreitas discloses a bird-scare cannon (U.S. Patent 3633560). Melin et al. discloses a water play toy (U.S. Patent 4235378). Konzak discloses bird scaring devices (U.S. Patents 4598660 & 4573427). O'Rourke discloses a recreational water sprinkler (U.S. Patent 6050501). Gill et al. discloses a fan advertising device (U.S. Patent 6279254). Saviano et al. discloses a flexible structural barrier (U.S. Patent 6435127).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Travis M. Reis whose telephone number is (571) 272-2249. The examiner can normally be reached on 8--5 M--F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on (571) 272-2245. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Travis M Reis
Examiner
Art Unit 2859

tmr
September 27, 2007

A handwritten signature in black ink, appearing to read 'R. Smith', with a large, stylized initial 'R' and a long, sweeping horizontal stroke extending to the right.

**RICHARD SMITH
PRIMARY EXAMINER**